

FIRST REGULAR SESSION

SENATE BILL NO. 45

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR PEARCE.

Pre-filed December 1, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

0528S.01I

AN ACT

To repeal section 620.1881, RSMo, and to enact in lieu thereof three new sections relating to certain tax credit programs administered by the department of economic development.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 620.1881, RSMo, is repealed and three new sections enacted in lieu thereof, to be known as sections 348.273, 348.274, and 620.1881, to read as follows:

348.273. As used in sections 348.273 and 348.274, the following terms shall mean:

(1) "Department", the Missouri department of economic development;

(2) "Distressed community", as defined in section 135.530, RSMo;

(3) "Equity investment", money or money equivalent in consideration for qualified securities. An equity investment shall be deemed to have been made on the date of acquisition of the qualified security, as such date is determined in accordance with the provisions of the Internal Revenue Code;

(4) "Investor":

(a) An individual who is an accredited investor, as defined in 17 CFR 230.501(a) as in effect on August 28, 2009; or

(b) Any partnership, corporation, trust, limited liability company, or not-for-profit entity that was established and is operated for the purpose of making preseed and seed stage investments in start-up companies, and is approved by the department;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 (5) "Qualified Missouri business", an independently owned and
19 operated business which is headquartered and located in this state and
20 which is in need of venture capital. Such business shall have no more
21 than two hundred employees, eighty percent of which are employed in
22 this state. Such business shall be involved in commerce for the purpose
23 of manufacturing, processing, or assembling products, conducting
24 research and development, or providing services in interstate
25 commerce but excluding retail, real estate, real estate development,
26 insurance, and professional services provided by accountants, lawyers,
27 or physicians. At the time approval is sought, such business shall be a
28 small business concern that meets the requirements of the United
29 States Small Business Administration's qualification size standards for
30 its venture capital program, as defined in the Small Business
31 Investment Act of 1958, as amended, and rules promulgated in 13 CFR
32 121.301(c), as amended;

33 (6) "Qualified securities", securities that are not redeemable or
34 repayable within seven years of issuance and that have been approved
35 in form and substance by the department. Forms of such equity
36 securities include:

37 (a) A general or limited partnership interest;

38 (b) Common stock;

39 (c) Preferred stock, with or without voting rights, without regard
40 to seniority position, and whether or not convertible into common
41 stock; or

42 (d) Convertible debt;

43 (7) "Rural area", any city, town, or village with fewer than fifteen
44 thousand inhabitants and located in any county that is not part of a
45 standard metropolitan statistical area as defined by the United States
46 Department of Commerce or its successor agency. However, any such
47 city, town, or village located in any county so defined as a standard
48 metropolitan statistical area may be designated a rural area by the
49 office of rural development if:

50 (a) A substantial number of persons in such county derive their
51 income from agriculture;

52 (b) The county has only one city within the county having a
53 population of more than fifteen thousand and is classified as a standard
54 metropolitan statistical area; and

55 (c) All other cities, towns, and villages in that county have a
56 population of less than fifteen thousand.

348.274. 1. The department may authorize tax credits to
2 encourage equity investment into technology-based early stage
3 Missouri companies.

4 2. If a qualified Missouri business is approved by the
5 department, the investors who contribute the first five hundred
6 thousand dollars in equity investment in the qualified Missouri
7 business may be issued a tax credit in the year the equity investment
8 is made. The tax credit shall be in a total amount equal to thirty
9 percent of such investors' equity investment in any qualified Missouri
10 business, subject to the limitations set forth in subsection 5 of this
11 section. However, if the qualified Missouri business invested in is
12 located in a rural area or a distressed community, the investors may be
13 issued a tax credit for forty percent of such investment, subject to the
14 limitations set forth in subsection 5 of this section.

15 3. (1) Before an investor may be entitled to receive tax credits,
16 as authorized by this section, such investor shall have made an equity
17 investment in a qualified security of a qualified Missouri
18 business. This business shall have been approved by the department
19 as a qualified Missouri business prior to the date on which the cash
20 investment was made. To be designated as a qualified Missouri
21 business, a business shall make application to the department in
22 accordance with the provisions of this section. Such application shall
23 be in form and substance as required by the department but shall
24 include at least the following:

25 (a) The name of the business and certified copies of the
26 organizational documents of the business;

27 (b) A business plan, including a description of the business and
28 the management, product, market, and financial plan of the business;

29 (c) A statement of the business innovative and proprietary
30 technology, product, or service;

31 (d) A statement of the potential economic impact of the
32 enterprise including the number, location, and types of jobs expected
33 to be created;

34 (e) A description of the qualified securities to be issued, the
35 consideration to be paid for the qualified securities, the amount of any

36 tax credits requested, and the earliest year in which the tax credits
37 may be redeemed;

38 (f) A statement of the amount, timing, and projected use of the
39 proceeds to be raised from the proposed sale of qualified securities;
40 and

41 (g) Other information as the department may request, such as
42 the names, addresses, and taxpayer identification numbers of all
43 investors who may qualify for the tax credit. Such list of investors who
44 may qualify for the tax credits shall be amended as new qualified
45 securities are sold or as any information on the list changes.

46 (2) No business shall be designated as a qualified Missouri
47 business unless such business meets all of the following criteria:

48 (a) The business shall not have had annual gross revenues of
49 more than three million dollars in the most recent tax year of the
50 business;

51 (b) The business shall not have ownership interests including,
52 but not limited to, common or preferred shares of stock that can be
53 traded by the public via a stock exchange, electronic exchange, bulletin
54 board, or other public market place on or before the date that a
55 qualifying investment is made;

56 (c) The business shall not be engaged primarily in any one or
57 more of the following enterprises:

58 a. The business of banking, savings and loan or lending
59 institutions, credit or finance, or financial brokerage or investments;

60 b. Professional services, such as legal, accounting or engineering
61 services;

62 c. Governmental, charitable, religious or trade organizations;

63 d. The ownership, development, brokerage, sales, or leasing of
64 real estate;

65 e. Insurance;

66 f. Construction or construction management or contracting;

67 g. Business consulting or brokerage;

68 h. Any business engaged primarily as a passive business, having
69 irregular or noncontinuous operations, or deriving substantially all of
70 the income of the business from passive investments that generate
71 interest, dividends, royalties, or capital gains, or any business
72 arrangements the effect of which is to immunize an investor from risk

73 of loss;

74 i. Any Missouri certified capital formation company;

75 j. Any activity that is in violation of the law; and

76 k. Any business raising money primarily to purchase real estate,
77 land, or fixtures;

78 (d) The business shall satisfy all other requirements of this
79 section.

80 (3) The portions of documents and other materials submitted to
81 the department that contain trade secrets shall be kept confidential
82 and shall be maintained in a secured environment by the director of
83 the department. For the purposes of this section, such portions of
84 documents and other materials shall mean any customer list, any
85 formula, compound, production data, or compilation of information
86 certain individuals within a commercial concern using such portions
87 of documents and other material means to fabricate, produce, or
88 compound an article of trade, or, any service having commercial value,
89 which gives the user an opportunity to obtain a business advantage
90 over competitors who do not know or use such service.

91 (4) A qualified Missouri business shall have the burden of proof
92 to demonstrate to the department the qualifications of the business
93 under this section and shall have the obligation to notify the
94 department in a timely manner of any changes in the qualifications of
95 the business or in the eligibility of investors to claim a tax credit for
96 cash investment in a qualified security.

97 4. The designation of a business as a qualified Missouri business
98 shall be made by the department, and such designation shall be
99 renewed annually. A business shall be so designated if the department
100 determines, based upon the application submitted by the business and
101 any additional investigation the staff of the department shall make,
102 that the following criteria have been or shall be satisfied:

103 (1) The business has a reasonable chance of success;

104 (2) The ability of investors in the business to receive tax credits
105 for cash investments in qualified securities of the business is necessary
106 because funding otherwise available for the business is not available
107 on commercially reasonable terms;

108 (3) The business has the reasonable potential to create
109 measurable employment within the state;

110 (4) The business has an innovative and proprietary technology,
111 product, and service;

112 (5) The existing owners of the business and other founders have
113 made or are committed to make a substantial financial and time
114 commitment to the business;

115 (6) The securities to be issued and purchased are qualified
116 securities; and

117 (7) Binding commitments have been made by the business to the
118 department for adequate reporting of financial data, including a
119 requirement for an annual report, or, if required by the department, an
120 annual audit of the financial and operational records of the business,
121 the right of access to the financial records of the business, and the
122 right of the department to record and publish normal and customary
123 data and information related to the issuance of tax credits that are not
124 otherwise determined to be trade or business secrets;

125 5. The department shall not issue tax credits of more than fifty
126 thousand dollars to an investor per investment into a single, qualified
127 Missouri company, or for tax credits totaling more than one hundred
128 thousand dollars in a single year per investor. The total amount of tax
129 credits that may be allowed under this section shall not exceed five
130 million dollars per tax year.

131 6. This tax credit may be used in its entirety in the taxable year
132 in which the equity investment is made or the credit may be carried
133 forward for use in any of the next three consecutive tax years until the
134 total amount of the credit is used. The tax credits may be sold,
135 assigned, exchanged, or otherwise transferred.

136 7. Tax credits may be used against the tax otherwise due under
137 chapter 143, RSMo, not including sections 143.191 to 143.265, RSMo.

138 8. A qualified Missouri business for which credits have been
139 issued that, within seven years of receiving tax credits under this
140 section relocates its headquarters out of Missouri, ceases to employ
141 eighty percent of its employees in Missouri, alters the principal nature
142 of its operations, or divests itself of key assets shall upon demand by
143 the department pay the state of Missouri an amount equal to the
144 amount of credits issued to its contributors.

145 9. The reasonable costs of the administration of this section, the
146 review of applications for certification as qualified Missouri businesses,

147 and the issuance of tax credits authorized by this section shall be
148 reimbursed through fees paid by the qualified Missouri businesses and
149 the investors or the transferees of investors, according to a reasonable
150 fee schedule adopted by the department.

151 10. In addition to reports by the businesses to the department,
152 the department shall also provide in its annual report information on
153 the marketing and use of the investor tax credits. This report shall
154 include the following:

155 (1) The amount of tax credits used in the previous fiscal year
156 including what percentage was claimed by individuals and what
157 percentage was claimed by firms and other entities;

158 (2) The types of businesses that benefited from the tax credits;
159 and

160 (3) Any aggregate job creation or capital investment in Missouri
161 that resulted from the use of the tax credits for a period of five years
162 beginning from the date on which the tax credits were awarded.

163 In addition, the annual report shall provide information regarding
164 what businesses deriving a benefit from the tax credits remained in
165 Missouri, what businesses ceased doing business, what businesses were
166 purchased, and what businesses may have moved out-of-state and the
167 reason for such move.

620.1881. 1. The department of economic development shall respond
2 within thirty days to a company who provides a notice of intent with either an
3 approval or a rejection of the notice of intent. The department shall give
4 preference to qualified companies and projects targeted at an area of the state
5 which has recently been classified as a disaster area by the federal
6 government. Failure to respond on behalf of the department of economic
7 development shall result in the notice of intent being deemed an approval for the
8 purposes of this section. A qualified company who is provided an approval for a
9 project shall be allowed a benefit as provided in this program in the amount and
10 duration provided in this section. A qualified company may receive additional
11 periods for subsequent new jobs at the same facility after the full initial period
12 if the minimum thresholds are met as set forth in sections 620.1875 to
13 620.1890. There is no limit on the number of periods a qualified company may
14 participate in the program, as long as the minimum thresholds are achieved and
15 the qualified company provides the department with the required reporting and

16 is in proper compliance for this program or other state programs. A qualified
17 company may elect to file a notice of intent to start a new project period
18 concurrent with an existing project period if the minimum thresholds are
19 achieved and the qualified company provides the department with the required
20 reporting and is in proper compliance for this program and other state programs;
21 however, the qualified company may not receive any further benefit under the
22 original approval for jobs created after the date of the new notice of intent, and
23 any jobs created before the new notice of intent may not be included as new jobs
24 for the purpose of benefit calculation in relation to the new approval.

25 2. Notwithstanding any provision of law to the contrary, any qualified
26 company that is awarded benefits under this program may not simultaneously
27 receive tax credits or exemptions under sections 135.100 to 135.150, sections
28 135.200 to 135.286, section 135.535, or sections 135.900 to 135.906, RSMo, at the
29 same project facility. The benefits available to the company under any other
30 state programs for which the company is eligible and which utilize withholding
31 tax from the new jobs of the company must first be credited to the other state
32 program before the withholding retention level applicable under the Missouri
33 quality jobs act will begin to accrue. These other state programs include, but are
34 not limited to, the new jobs training program under sections 178.892 to 178.896,
35 RSMo, the job retention program under sections 178.760 to 178.764, RSMo, the
36 real property tax increment allocation redevelopment act, sections 99.800 to
37 99.865, RSMo, or the Missouri downtown and rural economic stimulus act under
38 sections 99.915 to 99.980, RSMo. If any qualified company also participates in
39 the new jobs training program in sections 178.892 to 178.896, RSMo, the company
40 shall retain no withholding tax, but the department shall issue a refundable tax
41 credit for the full amount of benefit allowed under this subdivision. The calendar
42 year annual maximum amount of tax credits which may be issued to a qualifying
43 company that also participates in the new job training program shall be increased
44 by an amount equivalent to the withholding tax retained by that company under
45 the new jobs training program. However, if the combined benefits of the quality
46 jobs program and the new jobs training program exceed the projected state
47 benefit of the project, as determined by the department of economic development
48 through a cost-benefit analysis, the increase in the maximum tax credits shall be
49 limited to the amount that would not cause the combined benefits to exceed the
50 projected state benefit. Any taxpayer who is awarded benefits under this
51 program who knowingly hires individuals who are not allowed to work legally in

52 the United States shall immediately forfeit such benefits and shall repay the
53 state an amount equal to any state tax credits already redeemed and any
54 withholding taxes already retained.

55 3. The types of projects and the amount of benefits to be provided are:

56 (1) Small and expanding business projects: in exchange for the
57 consideration provided by the new tax revenues and other economic stimuli that
58 will be generated by the new jobs created by the program, a qualified company
59 may retain an amount equal to the withholding tax as calculated under
60 subdivision (33) of section 620.1878 from the new jobs that would otherwise be
61 withheld and remitted by the qualified company under the provisions of sections
62 143.191 to 143.265, RSMo, for a period of three years from the date the required
63 number of new jobs were created if the average wage of the new payroll equals
64 or exceeds the county average wage or for a period of five years from the date the
65 required number of new jobs were created if the average wage of the new payroll
66 equals or exceeds one hundred twenty percent of the county average wage;

67 (2) Technology business projects: in exchange for the consideration
68 provided by the new tax revenues and other economic stimuli that will be
69 generated by the new jobs created by the program, a qualified company may
70 retain an amount equal to a maximum of five percent of new payroll for a period
71 of five years from the date the required number of jobs were created from the
72 withholding tax of the new jobs that would otherwise be withheld and remitted
73 by the qualified company under the provisions of sections 143.191 to 143.265,
74 RSMo, if the average wage of the new payroll equals or exceeds the county
75 average wage. An additional one-half percent of new payroll may be added to the
76 five percent maximum if the average wage of the new payroll in any year exceeds
77 one hundred twenty percent of the county average wage in the county in which
78 the project facility is located, plus an additional one-half percent of new payroll
79 may be added if the average wage of the new payroll in any year exceeds one
80 hundred forty percent of the average wage in the county in which the project
81 facility is located. The department shall issue a refundable tax credit for any
82 difference between the amount of benefit allowed under this subdivision and the
83 amount of withholding tax retained by the company, in the event the withholding
84 tax is not sufficient to provide the entire amount of benefit due to the qualified
85 company under this subdivision. The calendar year annual maximum amount of
86 tax credits that may be issued to any qualified company for a project or
87 combination of projects is five hundred thousand dollars;

88 (3) High impact projects: in exchange for the consideration provided by
89 the new tax revenues and other economic stimuli that will be generated by the
90 new jobs created by the program, a qualified company may retain an amount from
91 the withholding tax of the new jobs that would otherwise be withheld and
92 remitted by the qualified company under the provisions of sections 143.191 to
93 143.265, RSMo, equal to three percent of new payroll for a period of five years
94 from the date the required number of jobs were created if the average wage of the
95 new payroll equals or exceeds the county average wage of the county in which the
96 project facility is located. The percentage of payroll allowed under this
97 subdivision shall be three and one-half percent of new payroll if the average wage
98 of the new payroll in any year exceeds one hundred twenty percent of the county
99 average wage in the county in which the project facility is located. The
100 percentage of payroll allowed under this subdivision shall be four percent of new
101 payroll if the average wage of the new payroll in any year exceeds one hundred
102 forty percent of the county average wage in the county in which the project
103 facility is located. An additional one percent of new payroll may be added to
104 these percentages if local incentives equal between ten percent and twenty-four
105 percent of the new direct local revenue; an additional two percent of new payroll
106 is added to these percentages if the local incentives equal between twenty-five
107 percent and forty-nine percent of the new direct local revenue; or an additional
108 three percent of payroll is added to these percentages if the local incentives equal
109 fifty percent or more of the new direct local revenue. The department shall issue
110 a refundable tax credit for any difference between the amount of benefit allowed
111 under this subdivision and the amount of withholding tax retained by the
112 company, in the event the withholding tax is not sufficient to provide the entire
113 amount of benefit due to the qualified company under this subdivision. The
114 calendar year annual maximum amount of tax credits that may be issued to any
115 qualified company for a project or combination of projects is seven hundred fifty
116 thousand dollars. The calendar year annual maximum amount of tax credit that
117 may be issued to any qualified company for a project or combination of projects
118 may be increased up to one million dollars if the number of new jobs will exceed
119 five hundred and if such action is proposed by the department and approved by
120 the quality jobs advisory task force established in section 620.1887; provided,
121 however, until such time as the initial at-large members of the quality jobs
122 advisory task force are appointed, this determination shall be made by the
123 director of the department of economic development. In considering such a

124 request, the task force shall rely on economic modeling and other information
125 supplied by the department when requesting the increased limit on behalf of the
126 project;

127 (4) Job retention projects: a qualified company may receive a tax credit
128 for the retention of jobs in this state, provided the qualified company and the
129 project meets all of the following conditions:

130 (a) For each of the twenty-four months preceding the year in which
131 application for the program is made the qualified company must have maintained
132 at least one thousand full-time employees at the employer's site in the state at
133 which the jobs are based, and the average wage of such employees must meet or
134 exceed the county average wage;

135 (b) The qualified company retained at the project facility the level of
136 full-time employees that existed in the taxable year immediately preceding the
137 year in which application for the program is made;

138 (c) The qualified company is considered to have a significant statewide
139 effect on the economy, and has been determined to represent a substantial risk
140 of relocation from the state by the quality jobs advisory task force established in
141 section 620.1887; provided, however, until such time as the initial at-large
142 members of the quality jobs advisory task force are appointed, this determination
143 shall be made by the director of the department of economic development;

144 (d) The qualified company in the project facility will cause to be invested
145 a minimum of seventy million dollars in new investment prior to the end of two
146 years or will cause to be invested a minimum of thirty million dollars in new
147 investment prior to the end of two years and maintain an annual payroll of at
148 least seventy million dollars during each of the years for which a credit is
149 claimed; and

150 (e) The local taxing entities shall provide local incentives of at least fifty
151 percent of the new direct local revenues created by the project over a ten-year
152 period.

153 The quality jobs advisory task force may recommend to the department of
154 economic development that appropriate penalties be applied to the company for
155 violating the agreement. The amount of the job retention credit granted may be
156 equal to up to fifty percent of the amount of withholding tax generated by the
157 full-time jobs at the project facility for a period of five years. The calendar year
158 annual maximum amount of tax credit that may be issued to any qualified
159 company for a job retention project or combination of job retention projects shall

160 be seven hundred fifty thousand dollars per year, but the maximum amount may
161 be increased up to one million dollars if such action is proposed by the
162 department and approved by the quality jobs advisory task force established in
163 section 620.1887; provided, however, until such time as the initial at-large
164 members of the quality jobs advisory task force are appointed, this determination
165 shall be made by the director of the department of economic development. In
166 considering such a request, the task force shall rely on economic modeling and
167 other information supplied by the department when requesting the increased
168 limit on behalf of the job retention project. In no event shall the total amount of
169 all tax credits issued for the entire job retention program under this subdivision
170 exceed three million dollars annually. Notwithstanding the above, no tax credits
171 shall be issued for job retention projects approved by the department after August
172 30, 2013;

173 (5) Small business job retention and flood survivor relief: a qualified
174 company may receive a tax credit under sections 620.1875 to 620.1890 for the
175 retention of jobs and flood survivor relief in this state for each job retained over
176 a three-year period, provided that:

177 (a) The qualified company did not receive any state or federal benefits,
178 incentives, or tax relief or abatement in locating its facility in a flood plain;

179 (b) The qualified company and related companies have fewer than one
180 hundred employees at the time application for the program is made;

181 (c) The average wage of the qualified company's and related companies'
182 employees must meet or exceed the county average wage;

183 (d) All of the qualified company's and related companies' facilities are
184 located in this state;

185 (e) The facilities at the primary business site in this state have been
186 directly damaged by floodwater rising above the level of a five hundred year flood
187 at least two years, but fewer than eight years, prior to the time application is
188 made;

189 (f) The qualified company made significant efforts to protect the facilities
190 prior to any impending danger from rising floodwaters;

191 (g) For each year it receives tax credits under sections 620.1875 to
192 620.1890, the qualified company and related companies retained, at the
193 company's facilities in this state, at least the level of full-time, year-round
194 employees that existed in the taxable year immediately preceding the year in
195 which application for the program is made; and

196 (h) In the years it receives tax credits under sections 620.1875 to
197 620.1890, the company cumulatively invests at least two million dollars in capital
198 improvements in facilities and equipment located at such facilities that are not
199 located within a five hundred year flood plain as designated by the Federal
200 Emergency Management Agency, and amended from time to time.

201 The amount of the small business job retention and flood survivor relief credit
202 granted may be equal to up to one hundred percent of the amount of withholding
203 tax generated by the full-time jobs at the project facility for a period of three
204 years. The calendar year annual maximum amount of tax credit that may be
205 issued to any qualified company for a small business job retention and survivor
206 relief project shall be two hundred fifty thousand dollars per year, but the
207 maximum amount may be increased up to five hundred thousand dollars if such
208 action is proposed by the department and approved by the quality jobs advisory
209 task force established in section 620.1887. In considering such a request, the
210 task force shall rely on economic modeling and other information supplied by the
211 department when requesting an increase in the limit on behalf of the small
212 business job retention and flood survivor relief project. In no event shall the total
213 amount of all tax credits issued for the entire small business job retention and
214 flood survivor relief program under this subdivision exceed five hundred thousand
215 dollars annually. Notwithstanding the provisions of this subdivision to the
216 contrary, no tax credits shall be issued for small business job retention and flood
217 survivor relief projects approved by the department after August 30, 2010.

218 4. The qualified company shall provide an annual report of the number
219 of jobs and such other information as may be required by the department to
220 document the basis for the benefits of this program. The department may
221 withhold the approval of any benefits until it is satisfied that proper
222 documentation has been provided, and shall reduce the benefits to reflect any
223 reduction in full-time employees or new payroll. Upon approval by the
224 department, the qualified company may begin the retention of the withholding
225 taxes when it reaches the minimum number of new jobs and the average wage
226 exceeds the county average wage. Tax credits, if any, may be issued upon
227 satisfaction by the department that the qualified company has exceeded the
228 county average wage and the minimum number of new jobs. In such annual
229 report, if the average wage is below the county average wage, the qualified
230 company has not maintained the employee insurance as required, or if the
231 number of new jobs is below the minimum, the qualified company shall not

232 receive tax credits or retain the withholding tax for the balance of the benefit
233 period. In the case of a qualified company that initially filed a notice of intent
234 and received an approval from the department for high impact benefits and the
235 minimum number of new jobs in an annual report is below the minimum for high
236 impact projects, the company shall not receive tax credits for the balance of the
237 benefit period but may continue to retain the withholding taxes if it otherwise
238 meets the requirements of a small and expanding business under this program.

239 5. [The maximum calendar year annual tax credits issued for the entire
240 program shall not exceed sixty million dollars.] Notwithstanding any provision
241 of law to the contrary, the maximum annual tax credits authorized under section
242 135.535, RSMo, are hereby reduced from ten million dollars to eight million
243 dollars, with the balance of two million dollars transferred to this
244 program. There shall be no limit on the amount of withholding taxes that may
245 be retained by approved companies under this program.

246 6. The department shall allocate the annual tax credits based on the date
247 of the approval, reserving such tax credits based on the department's best
248 estimate of new jobs and new payroll of the project, and the other factors in the
249 determination of benefits of this program. However, the annual issuance of tax
250 credits is subject to the annual verification of the actual new payroll. The
251 allocation of tax credits for the period assigned to a project shall expire if, within
252 two years from the date of commencement of operations, or approval if applicable,
253 the minimum thresholds have not been achieved. The qualified company may
254 retain authorized amounts from the withholding tax under this section once the
255 minimum new jobs thresholds are met for the duration of the project period. No
256 benefits shall be provided under this program until the qualified company meets
257 the minimum new jobs thresholds. In the event the qualified company does not
258 meet the minimum new job threshold, the qualified company may submit a new
259 notice of intent or the department may provide a new approval for a new project
260 of the qualified company at the project facility or other facilities.

261 7. For a qualified company with flow-through tax treatment to its
262 members, partners, or shareholders, the tax credit shall be allowed to members,
263 partners, or shareholders in proportion to their share of ownership on the last
264 day of the qualified company's tax period.

265 8. Tax credits may be claimed against taxes otherwise imposed by
266 chapters 143 and 148, RSMo, and may not be carried forward but shall be claimed
267 within one year of the close of the taxable year for which they were issued, except

268 as provided under subdivision (4) of subsection 3 of this section.

269 9. Tax credits authorized by this section may be transferred, sold, or
270 assigned by filing a notarized endorsement thereof with the department that
271 names the transferee, the amount of tax credit transferred, and the value received
272 for the credit, as well as any other information reasonably requested by the
273 department.

274 10. Prior to the issuance of tax credits, the department shall verify
275 through the department of revenue, or any other state department, that the tax
276 credit applicant does not owe any delinquent income, sales, or use tax or interest
277 or penalties on such taxes, or any delinquent fees or assessments levied by any
278 state department and through the department of insurance, financial institutions
279 and professional registration that the applicant does not owe any delinquent
280 insurance taxes. Such delinquency shall not affect the authorization of the
281 application for such tax credits, except that at issuance credits shall be first
282 applied to the delinquency and any amount issued shall be reduced by the
283 applicant's tax delinquency. If the department of revenue or the department of
284 insurance, financial institutions and professional registration, or any other state
285 department, concludes that a taxpayer is delinquent after June fifteenth but
286 before July first of any year and the application of tax credits to such delinquency
287 causes a tax deficiency on behalf of the taxpayer to arise, then the taxpayer shall
288 be granted thirty days to satisfy the deficiency in which interest, penalties, and
289 additions to tax shall be tolled. After applying all available credits toward a tax
290 delinquency, the administering agency shall notify the appropriate department
291 and that department shall update the amount of outstanding delinquent tax owed
292 by the applicant. If any credits remain after satisfying all insurance, income,
293 sales, and use tax delinquencies, the remaining credits shall be issued to the
294 applicant, subject to the restrictions of other provisions of law.

295 11. Except as provided under subdivision (4) of subsection 3 of this
296 section, the director of revenue shall issue a refund to the qualified company to
297 the extent that the amount of credits allowed in this section exceeds the amount
298 of the qualified company's income tax.

299 12. An employee of a qualified company will receive full credit for the
300 amount of tax withheld as provided in section 143.211, RSMo.

301 13. If any provision of sections 620.1875 to 620.1890 or application thereof
302 to any person or circumstance is held invalid, the invalidity shall not affect other
303 provisions or application of these sections which can be given effect without the

304 invalid provisions or application, and to this end, the provisions of sections
305 620.1875 to 620.1890 are hereby declared severable.

✓

Unofficial

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